

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

NOVADAQ TECHNOLOGIES, INC.,

Plaintiff,

v.

KARL STORZ GMBH & CO. K.G., et al.,

Defendants.

Case No. [14-cv-04853-PSG](#)

OMNIBUS ORDER RE: MOTIONS TO SEAL

(Re: Docket Nos. 212, 223, 229, 236, 245, 247, 255, 257)

Before the court are several administrative motions to seal. “Historically, courts have recognized a ‘general right to inspect and copy public records and documents, including judicial records and documents.’”¹ Accordingly, when considering a sealing request, “a ‘strong presumption in favor of access’ is the starting point.”² Parties seeking to seal judicial records relating to dispositive motions bear the burden of overcoming the presumption with “compelling reasons” that outweigh the general history of access and the public policies favoring disclosure.³

However, “while protecting the public's interest in access to the courts, we must remain mindful of the parties' right to access those same courts upon terms which will not unduly harm their competitive interest.”⁴ Records attached to nondispositive motions therefore are not subject

¹ *Kamakana v. City & County of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006) (quoting *Nixon v. Warner Commc 'ns, Inc.*, 435 U.S. 589, 597 & n. 7 (1978)).

² *Id.* (quoting *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1135 (9th Cir. 2003)).

³ *Id.* at 1178-79.

⁴ *Apple Inc. v. Samsung Electronics Co., Ltd.*, 727 F.3d 1214, 1228-29 (Fed. Cir. 2013).

to the strong presumption of access.⁵ Because the documents attached to nondispositive motions “are often unrelated, or only tangentially related, to the underlying cause of action,” parties moving to seal must meet the lower “good cause” standard of Rule 26(c).⁶ As with dispositive motions, the standard applicable to nondispositive motions requires a “particularized showing”⁷ that “specific prejudice or harm will result” if the information is disclosed.⁸ “Broad allegations of harm, unsubstantiated by specific examples of articulated reasoning” will not suffice.⁹ A protective order sealing the documents during discovery may reflect the court’s previous determination that good cause exists to keep the documents sealed,¹⁰ but a blanket protective order that allows the parties to designate confidential documents does not provide sufficient judicial scrutiny to determine whether each particular document should remain sealed.¹¹

In addition to making particularized showings of good cause, parties moving to seal documents must comply with the procedures established by Civ. L.R. 79-5. Pursuant to Civ. L.R. 79-5(b), a sealing order is appropriate only upon a request that establishes the document is “sealable,” or “privileged or protectable as a trade secret or otherwise entitled to protection under the law.” “The request must be narrowly tailored to seek sealing only of sealable material, and must conform with Civil L.R. 79-5(d).”¹² “Within 4 days of the filing of the Administrative

⁵ *See id.* at 1180.

⁶ *Id.* at 1179 (internal quotations and citations omitted).

⁷ *Id.*

⁸ *Phillips ex rel. Estates of Byrd v. Gen. Motors Corp.*, 307 F.3d 1206, 1210-11 (9th Cir. 2002); *see* Fed. R. Civ. P. 26(c).

⁹ *Beckman Indus., Inc. v. Int’l Ins. Co.*, 966 F.2d 470, 476 (9th Cir. 1992).

¹⁰ *See Kamakana*, 447 F.3d at 1179-80.

¹¹ *See* Civ. L.R. 79-5(d)(1)(A) (“Reference to a stipulation or protective order that allows a party to designate certain documents as confidential is not sufficient to establish that a document, or portions thereof, are sealable.”).

¹² Civ. L.R. 79-5(b). In part, Civ. L.R. 79-5(d) requires the submitting party to attach a “proposed

Motion to File Under Seal, the Designating Party must file a declaration as required by subsection 79-5(d)(1)(A) establishing that all of the designated material is sealable.”¹³

With these standards in mind, the courts rules on the instant motions as follows:

<u>Motion to Seal</u>	<u>Document to be Sealed</u>	<u>Result</u>	<u>Reason/Explanation</u>
212	Novadaq’s Motion to Strike the Expert Report of Jesse David	Designations highlighted in yellow at Docket No. 212-2 SEALED; all other designations UNSEALED.	Only sealed portions narrowly tailored to confidential business information.
212	Exhibit 1 to Novadaq’s Motion to Strike	Designations highlighted in black at Docket No. 218-1 SEALED; all other designations UNSEALED.	Only sealed portions narrowly tailored to confidential business information.
212	Exhibit 2 to Novadaq’s Motion to Strike	Designations highlighted in black at Docket No. 218-2 SEALED; all other designations UNSEALED.	Only sealed portions narrowly tailored to confidential business information.
212	Exhibit 8 to Novadaq’s Motion to Strike	Designations highlighted in black at Docket No. 218-3 SEALED; all other designations UNSEALED.	Only sealed portions narrowly tailored to confidential business information.
223	Defendants’ Motion for Summary Judgment of No Willful Infringement and No Monetary Damages	Designations highlighted in yellow at Docket No. 223-4 SEALED; all other designations UNSEALED.	Only sealed portions narrowly tailored to confidential business information.

order that is narrowly tailored to seal only the sealable material” which “lists in table format each document or portion thereof that is sought to be sealed,” Civ. L.R. 79-5(d)(1)(b), and an “unredacted version of the document” that indicates “by highlighting or other clear method, the portions of the document that have been omitted from the redacted version.” Civ. L.R. 79-5(d)(1)(d).

¹³ Civ. L.R. 79-5(e)(1).

223	Defendants' Motion for Summary Judgment of Non-Infringement Because There Is No Confusion	Designations highlighted in yellow on pages 1:6-7, 2:13-14, 4:15-16, 7:25-8:3, 11:3-8, 14:25, 16:14-23, 17:24, 18:13-16, 18:22-26 at Docket No. 223-6 SEALED; all other designations UNSEALED.	Only sealed portions narrowly tailored to confidential business information.
223	Defendants' Motion for Summary Judgment of Non-Infringement Based on Right of Priority and Abandonment	Designations highlighted in yellow on pages 9:16-21, 14:13-17:15 at Docket No. 223-8 SEALED; all other designations UNSEALED.	Only sealed portions narrowly tailored to confidential business information.
223	Declaration of Thomas Prescher in Support of Defendants' Motions for Summary Judgment	Designations highlighted in yellow at Docket No. 227-1 SEALED; all other designations UNSEALED.	Only sealed portions narrowly tailored to confidential business information.
223	Exhibit 5 to the Welsh Declaration	Designations highlighted in yellow at Docket No. 223-10 SEALED; all other designations UNSEALED.	Only sealed portions narrowly tailored to confidential business information.
223	Exhibit 7 to the Welsh Declaration	Designations highlighted in yellow at Docket No. 223-12 SEALED; all other designations UNSEALED.	Only sealed portions narrowly tailored to confidential business information.
223	Exhibit 8 to the Welsh Declaration	SEALED	Narrowly tailored to confidential business information.
223	Exhibit 9 to the Welsh Declaration	Designations highlighted in yellow at Docket No. 223-16 SEALED; all other designations UNSEALED.	Only sealed portions narrowly tailored to confidential business information.
223	Exhibit 11 to the Welsh Declaration	SEALED	Narrowly tailored to confidential business information.
223	Exhibit 12 to the Welsh Declaration	SEALED	Narrowly tailored to confidential business information.

223	Exhibit 22 to the Welsh Declaration	UNSEALED	No declaration in support filed with the court as required by Civ. L.R. 79-5(e)(1).
223	Exhibit 23 to the Welsh Declaration	SEALED	Narrowly tailored to confidential business information.
223	Exhibit 27 to the Welsh Declaration	UNSEALED	No declaration in support filed with the court as required by Civ. L.R. 79-5(e)(1).
223	Exhibit 29 to the Welsh Declaration	UNSEALED	No declaration in support filed with the court as required by Civ. L.R. 79-5(e)(1).
223	Exhibit 38 to the Welsh Declaration	UNSEALED	No declaration in support filed with the court as required by Civ. L.R. 79-5(e)(1).
223	Exhibit 39 to the Welsh Declaration	Docket No. 223-32 at pages 22-29, 38-41, 54-81 SEALED; all other designations UNSEALED.	Only sealed portions narrowly tailored to confidential business information.
223	Exhibit 40 to the Welsh Declaration	SEALED	Narrowly tailored to confidential business information.
223	Exhibit 43 to the Welsh Declaration	Designations highlighted in yellow at Docket No. 223-36 SEALED; all other designations UNSEALED.	Only sealed portions narrowly tailored to confidential business information.
223	Exhibit 44 to the Welsh Declaration	Designations highlighted in yellow at Docket No. 223-38 SEALED; all other designations UNSEALED.	Only sealed portions narrowly tailored to confidential business information.

223	Exhibit 45 to the Welsh Declaration	Designations highlighted in yellow at Docket No. 223-40 SEALED; all other designations UNSEALED.	Only sealed portions narrowly tailored to confidential business information.
223	Exhibit 56 to the Welsh Declaration	UNSEALED	No declaration in support filed with the court as required by Civ. L.R. 79-5(e)(1).
223	Exhibit 57 to the Welsh Declaration	UNSEALED	No declaration in support filed with the court as required by Civ. L.R. 79-5(e)(1).
223	Exhibit 59 to the Welsh Declaration	UNSEALED	No declaration in support filed with the court as required by Civ. L.R. 79-5(e)(1).
223	Exhibit 60 to the Welsh Declaration	UNSEALED	No declaration in support filed with the court as required by Civ. L.R. 79-5(e)(1).
223	Exhibit 61 to the Welsh Declaration	Docket No. 223-50 at Bates numbers NVDQ000029765-70, NVDQ000031395-401, NVDQ000043145-52, NVDQ000122549-50, NVDQ000121283-86 SEALED; Docket No. 223-51 at Bates numbers KS013547-48, NVDQ000484777-78, NVDQ000602619-20, NVDQ000607369 SEALED; all other designations UNSEALED.	Only sealed portions narrowly tailored to confidential business information.
223	Exhibit 62 to the Welsh Declaration	Docket No. 223-53 at Bates numbers NVDQ000848099-106 SEALED; all other designations UNSEALED.	Only sealed portions narrowly tailored to confidential business information.

223	Exhibit 66 to the Welsh Declaration	SEALED	Narrowly tailored to confidential business information.
223	Exhibit 67 to the Welsh Declaration	SEALED	Narrowly tailored to confidential business information.
223	Exhibit 68 to the Welsh Declaration	SEALED	Narrowly tailored to confidential business information.
223	Exhibit 72 to the Welsh Declaration	SEALED	Narrowly tailored to confidential business information.
229	Novadaq's Motion for Partial Summary Judgment	UNSEALED	No declaration in support filed with the court as required by Civ. L.R. 79-5(e)(1).
229	Exhibit G to the Taylor Declaration	UNSEALED	No declaration in support filed with the court as required by Civ. L.R. 79-5(e)(1).
229	Exhibit H to the Taylor Declaration	UNSEALED	No declaration in support filed with the court as required by Civ. L.R. 79-5(e)(1).
229	Exhibit I to the Taylor Declaration	UNSEALED	No declaration in support filed with the court as required by Civ. L.R. 79-5(e)(1).
229	Exhibit J to the Taylor Declaration	UNSEALED	No declaration in support filed with the court as required by Civ. L.R. 79-5(e)(1).
229	Exhibit K to the Taylor Declaration	UNSEALED	No declaration in support filed with the court as required by Civ. L.R. 79-5(e)(1).

229	Exhibit L to the Taylor Declaration	UNSEALED	No declaration in support filed with the court as required by Civ. L.R. 79-5(e)(1).
229	Exhibit M to the Taylor Declaration	UNSEALED	No declaration in support filed with the court as required by Civ. L.R. 79-5(e)(1).
229	Exhibit O to the Taylor Declaration	UNSEALED	No declaration in support filed with the court as required by Civ. L.R. 79-5(e)(1).
229	Exhibit P to the Taylor Declaration	UNSEALED	No declaration in support filed with the court as required by Civ. L.R. 79-5(e)(1).
236	Defendants' Opposition to Novadaq's Motion to Strike the Expert Report of Jesse David	Designations highlighted in yellow at Docket No. 236-4 SEALED; all other designations UNSEALED.	Only sealed portions narrowly tailored to confidential business information.
236	Exhibit 1 to the Keeler Declaration	UNSEALED	No declaration in support filed with the court as required by Civ. L.R. 79-5(e)(1).
236	Exhibit 2 to the Keeler Declaration	SEALED	Narrowly tailored to confidential business information.
236	Exhibit 3 to the Keeler Declaration	SEALED	Narrowly tailored to confidential business information.
236	Exhibit 4 to the Keeler Declaration	SEALED	Narrowly tailored to confidential business information.
236	Exhibit 5 to the Keeler Declaration	SEALED	Narrowly tailored to confidential business information.

236	Exhibit 6 to the Keeler Declaration	SEALED	Narrowly tailored to confidential business information.
245	Defendants' Opposition to Novadaq's Motion for Partial Summary Judgment	Designations highlighted in yellow at Docket No. 245-4 SEALED; all other designations UNSEALED.	Only sealed portions narrowly tailored to confidential business information.
247	Novadaq's Consolidated Opposition to Defendants' Motions for Summary Judgment	Designations highlighted in yellow at Docket No. 247-4 SEALED; designations highlighted in green at Docket No. 247-4, except for designations on pages 25 and 35, SEALED; all other designations UNSEALED.	Only sealed portions narrowly tailored to confidential business information.
247	Exhibit 9 to the Taylor Declaration	Designations highlighted in yellow at Docket No. 247-6 SEALED; all other designations UNSEALED.	Only sealed portions narrowly tailored to confidential business information.
247	Exhibit 10 to the Taylor Declaration	Designations highlighted in yellow at Docket No. 247-8 SEALED; all other designations UNSEALED.	Only sealed portions narrowly tailored to confidential business information.
247	Exhibit 11 to the Taylor Declaration	UNSEALED	No declaration in support filed with the court as required by Civ. L.R. 79-5(e)(1).
247	Exhibit 14 to the Taylor Declaration	Designations highlighted in yellow at Docket No. 247-11 SEALED; all other designations UNSEALED.	Only sealed portions narrowly tailored to confidential business information.
247	Exhibit 19 to the Taylor Declaration	Designations highlighted in yellow at Docket No. 247-13 SEALED; all other designations UNSEALED.	Only sealed portions narrowly tailored to confidential business information.

247	Exhibit 20 to the Taylor Declaration	UNSEALED	No declaration in support filed with the court as required by Civ. L.R. 79-5(e)(1).
247	Exhibit 25 to the Taylor Declaration	UNSEALED	No declaration in support filed with the court as required by Civ. L.R. 79-5(e)(1).
247	Exhibit 26 to the Taylor Declaration	Designations highlighted in black at Docket No. 253-1 SEALED; all other designations UNSEALED.	Only sealed portions narrowly tailored to confidential business information.
247	Exhibit 30 to the Taylor Declaration	SEALED	Narrowly tailored to confidential business information.
247	Exhibit 31 to the Taylor Declaration	Designations highlighted in black at Docket No. 253-2 SEALED; all other designations UNSEALED.	Only sealed portions narrowly tailored to confidential business information.
247	Exhibit 32 to the Taylor Declaration	SEALED	Narrowly tailored to confidential business information.
247	Exhibit 33 to the Taylor Declaration	UNSEALED	No declaration in support filed with the court as required by Civ. L.R. 79-5(e)(1).
247	Exhibit 34 to the Taylor Declaration	UNSEALED	No declaration in support filed with the court as required by Civ. L.R. 79-5(e)(1).
247	Exhibit 40 to the Taylor Declaration	UNSEALED	No declaration in support filed with the court as required by Civ. L.R. 79-5(e)(1).

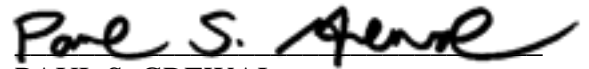
247	Exhibit 46 to the Taylor Declaration	UNSEALED	No declaration in support filed with the court as required by Civ. L.R. 79-5(e)(1).
247	Exhibit 47 to the Taylor Declaration	Designations highlighted in black at Docket No. 253-3 SEALED; all other designations UNSEALED.	Only sealed portions narrowly tailored to confidential business information.
247	Exhibit 50 to the Taylor Declaration	Designations highlighted in black at Docket No. 253-4 SEALED; all other designations UNSEALED.	Only sealed portions narrowly tailored to confidential business information.
247	Exhibit 57 to the Taylor Declaration	Designations highlighted in yellow at Docket No. 247-27 SEALED; all other designations UNSEALED.	Only sealed portions narrowly tailored to confidential business information.
247	Exhibit 58 to the Taylor Declaration	SEALED	Narrowly tailored to confidential business information.
247	Exhibit 59 to the Taylor Declaration	Designations highlighted in yellow at Docket No. 247-30 SEALED; all other designations UNSEALED.	Only sealed portions narrowly tailored to confidential business information.
247	Exhibit 60 the Taylor Declaration	Designations highlighted in yellow at Docket No. 247-32 SEALED; all other designations UNSEALED.	Only sealed portions narrowly tailored to confidential business information.
247	Exhibit 61 to the Taylor Declaration	Designations highlighted in black at Docket No. 253-5 SEALED; all other designations UNSEALED.	Only sealed portions narrowly tailored to confidential business information.
247	Exhibit 65 to the Taylor Declaration	SEALED	Narrowly tailored to confidential business information.

255	Novadaq's Reply in Support of Motion for Partial Summary Judgment	UNSEALED	No declaration in support filed with the court as required by Civ. L.R. 79-5(e)(1).
257	Defendants' Omnibus Reply to Novadaq's Consolidated Opposition to Defendants' Motions for Summary Judgment	Designations highlighted in yellow on pages 6:2-3, 6:9-10, 11:12-16 at Docket No. 257-4 SEALED; designations highlighted in green at Docket No. 257-4 SEALED; all other designations UNSEALED.	Only sealed portions narrowly tailored to confidential business information.
257	Exhibit A to the Welsh Declaration	UNSEALED	No declaration in support filed with the court as required by Civ. L.R. 79-5(e)(1).
257	Exhibit B to the Welsh Declaration	UNSEALED	No declaration in support filed with the court as required by Civ. L.R. 79-5(e)(1).
257	Exhibit C to the Welsh Declaration	UNSEALED	No declaration in support filed with the court as required by Civ. L.R. 79-5(e)(1).
257	Exhibit D to the Welsh Declaration	UNSEALED	No declaration in support filed with the court as required by Civ. L.R. 79-5(e)(1).
257	Exhibit F to the Welsh Declaration	UNSEALED	No declaration in support filed with the court as required by Civ. L.R. 79-5(e)(1).
257	Exhibit H to the Welsh Declaration	Designations boxed in red at Docket No. 257-16 SEALED; all other designations UNSEALED.	Only sealed portions narrowly tailored to confidential business information.

257	Exhibit J to the Welsh Declaration	Designations boxed in red at Docket No. 257-18 SEALED; all other designations UNSEALED.	Only sealed portions narrowly tailored to confidential business information.
257	Exhibit K to the Welsh Declaration	Designations boxed in red at Docket No. 257-20 SEALED; all other designations UNSEALED.	Only sealed portions narrowly tailored to confidential business information.
257	Exhibit L to the Welsh Declaration	Designations boxed in red at Docket No. 257-22 SEALED; all other designations UNSEALED.	Only sealed portions narrowly tailored to confidential business information.
257	Exhibit M to the Welsh Declaration	UNSEALED	Entire presentation not narrowly tailored to confidential business information.

SO ORDERED.

Dated: October 8, 2015



PAUL S. GREWAL

United States Magistrate Judge